IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 982 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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FLINT PHARMA PVT. LTD

Versus

CHIEF CONTROLLING REVENUE AUTHORITY

Appearance:

1. Special Civil Application No. 982 of 2000

MR VIMAL M PATEL for Petitioner No. 1

NOTICE SERVED for Respondent No. 1-2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 20/07/2002

ORAL JUDGEMENT

Rule. Service of rule is waived by learned A.G.P. Shri Vipul Pancholi. At the request of the learned advocates and looking to the facts of the case, the petition is finally heard today.

2. The petitioner is a limited Company which has been aggrieved by an order dated 13th May, 1999 passed by respondent no.1-Chief Controlling Revenue Authority. By virtue of the impugned order, the order dated 24.09.1992 passed by respondent no. 2 has been confirmed.

3. Learned advocate Shri Vimal Patel appearing for the petitioner has submitted that the petitioner-Company had purchased some property under a registered sale deed dated 22nd April, 1985 from Baroda Electronic Industries Private Limited. Though, the property was purchased by the petitioner, due to some mistake, the document was executed in the name of Shri Subhashbhai Ranchhodbhai Patel, who was one of directors of the petitioner-Company at the relevant time. This fact was not elaborately stated in the sale deed. It has been submitted by the learned advocate that the entire amount of consideration was paid by the petitioner and not by Shri Subhashbhai Ranchhodbhai Patel, the Director in whose name the property was purchased at the relevant time. Thus, the case of the petitioner is that the petitioner is the person who has purchased the property in question.

4. When the mistake referred to hereinabove came to the notice of the petitioner-Company, a rectification deed had been executed on 15th December, 1987 which was duly registered.

5. In spite of the above fact, respondent no. 2 believed that in fact Shri Subhashbhai Ranchhodbhai Patel had sold the property to the petitioner and, therefore, he initiated proceedings under the provisions of the Bombay Stamp Act, 1958 (hereinafter referred to as 'The Act'). A Show cause notice was given to the petitioner and ultimately respondent no. 2 had decided the case on 24th September, 1992 without hearing the petitioner or its representative. Being aggrieved by the said order dated 24th September, 1992, an appeal had been filed before respondent no. 1 and the said appeal has also been rejected. Being aggrieved by the said order passed in appeal, the petitioner has approached this Court by way of this petition.

6. It has been very fairly submitted by the learned advocate appearing for the petitioner that somehow the petitioner's case was not represented before respondent no. 2 and thus respondent no. 2 took an ex-parte decision. Had the petitioner got an opportunity to represent its case before respondent no.2, the petitioner would have adduced evidence in the nature of books of

accounts of the petitioner-Company to show that the entire amount of consideration had been paid by the petitioner-Company and not by Shri Subhashbhai Ranchhodbhai Patel, who was one of the Directors of the petitioner-Company. The learned advocate has also tried to show some record which might denote that the petitioner company is the real owner of the property in question. Unfortunately, even before the appellate authority, though the hearing was adjourned on five different occasions, the petitioner could not represent its case and, therefore, the appeal was dismissed.

7. It has been submitted by the learned advocate that if one more opportunity is given to the petitioner to produce necessary documents, justice would be done to the petitioner. It has been submitted that the learned advocate, who was engaged by the petitioner could not attend the hearing as he was suffering from jaundice at the relevant time.

8. On the other hand learned A.G.P Shri Vipul Pancholi has vehemently submitted that the impugned orders are just and proper. He has submitted that though ample opportunities were given to the petitioner, the petitioner or its representative neither remained present before respondent no. 2 at an earlier point of time or before respondent no. 1 when the appeal was filed. According to him, no evidence was adduced before respondent no. 2 in pursuance of a show cause notice issued by respondent no. 2 and, therefore, he had heard and decided the case on the basis of the facts available with him. It has also been submitted by him that the record shown to this Court should not be looked into as it was never placed before respondent no.2.

9. It has also been submitted by him that even otherwise the document of rectification was not just and proper because according to him, there is no provision with regard to making change in the name of the buyer in a document for rectification. Rectification can be made if some clerical mistake is made and in the instant case, as submitted by the learned A.G.P, there was no mistake in the original deed.

10. I have heard the learned advocates and have gone through the impugned orders. It is pertinent to note that ample opportunities were given to the petitioner but as stated hereinabove, due to sickness of the learned advocate, he could not remain present and the concerned respondents had decided the matter ex-parte. It is very clear that no fault can be found with the respondent

authorities who decided the case ex-parte as the petitioner or its representative had not remained present. In spite of the said fact, as the petitioner is having sufficient evidence, in the interest of justice, one more opportunity is given to the petitioner so that upon perusal of the relevant documents, respondent no. 2 can take a fresh decision. The petitioner shall pay a sum of Rs. 5,000/- by way of compensation to respondent no. 2 authority, and upon payment of the said amount of compensation, respondent no. 2 shall issue fresh notice to the concerned parties under the provisions of the Act. It is clarified that the petitioner or its advocate shall not pray for time without any justifiable reason and shall extend full cooperation to respondent no.2 so that the matter can be decided as soon as possible.

11. In the result, the impugned orders are quashed and set aside with a direction to respondent no. 2 to decide the matter afresh. The amount shall be deposited within a period of one month from today with respondent no. 2. Immediately upon deposit of the amount, respondent no. 2 shall initiate necessary proceedings and try to expedite the proceedings.

Rule is made absolute. Direct service is permitted.

(A.R. DAVE, J.)

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